

REMARKS

Claims 1-21 are all of the pending claims, with claims 1, 18, and 20 being written in independent form.

I. Examiner Interview:

Applicant thanks Examiner Apanius for the courtesies extended during the in-person interview conducted on March 8, 2007.

During the interview, Applicant demonstrated an embodiment of the claimed test plaster, and a test plaster according to NL 8701577. Applicant also presented traversal arguments against the rejections of independent claims 1, 18 and 20. During the interview, the Examiner agreed that at least claim 20 appears to adequately define over the asserted references. No agreement was reached with respect to claims 1 and 18.

The above description, which is believed to satisfy the requirements of MPEP 713.04, is intended as an explanation only and is not intended to limit the invention defined by the pending claims. In addition, the following remarks reflect (among other things) the various points discussed during the interview.

II. Allowable Subject Matter:

At page 9 of the Office Action, the Examiner indicates that claims 12, 13 and 14 would be allowable if they were rewritten in independent form. Applicant does not, however, rewrite the claims as suggested by the Examiner because independent claim 1 is believed to be patentable for the reasons discussed in detail below.

III. Claim Rejections on Prior Art Grounds:

The Examiner rejects:

1. claims 1, 3, 5, 8, 11, 15, 16 and 18-20 under 35 USC §103(a) as being obvious over NL 8701577 to van der Bend ("van der Bend") in view of US 6,142,954 to Anhäuser et al. ("Anhäuser");
2. claims 2, 4, 17 and 21 under 35 USC §103(a) as being obvious over van der Bend in view of US 3,894,531 to Saunders, Jr. ("Saunders");
3. claim 6 under 35 USC §103(a) as being obvious over van der Bend in view of US RE37,934 to Hoffman ("Hoffman");

4. claim 7 under 35 USC §103(a) as being obvious over van der Bend in view of US 5,944,662 to Schoendorfer (“Schoendorfer”); and
5. claims 9 and 10 under 35 USC §103(a) as being obvious over van der Bend in view of US 5,874,226 to Zeytinoglu et al. (“Zeytinoglu”).

Applicant respectfully traverses all of these rejections in view of the following remarks.

As an initial matter, Applicant amends all of the claims by deleting the claim terms “filter element” and “filter layer” in favor of “support element” and “support layer,” respectively. This term substitution is intended to broaden the claims, and does not introduce any new matter. By way of example only, the filter elements 17 of the illustrated embodiments may be characterized as a “support elements” to the extent that they may support an allergen.

A. Independent Claim 1:

Independent claim 1 recites (among other things) the following two features:

- (1) the support element includes a support layer “*adhered to a moisture barrier layer;*” and
- (2) a frame-shaped foam plastic layer “*secured on top of and embracing the support element.*”

An example, non-limiting embodiment of these features is depicted in Fig. 2. Here, the support element 17 includes a support layer 18 adhered to a moisture barrier layer 19.¹ The support element 17 is secured to the carrier 10, and the frame-shaped foam plastic layer 24 is secured on top of the support element 17. At least these features (as recited in independent claim 1), in combination with the other features recited in independent claim 1, are not taught or suggested by the prior art relied upon by the Examiner.

The Examiner relies heavily upon van der Bend to teach most of the features of the present invention, except for the frame being “*secured on top of and embracing*” the support element. Therefore, the Examiner looks to the secondary reference of Anhäuser to allegedly teach this feature. This rejection position is not convincing for several reasons.

The Examiner’s Reliance Upon van der Bend is Misplaced

With reference to Figs. 3 and 4 of van der Bend, the device includes a frame 4 with a plurality of openings 5 that respectively define test chambers 6. Each test chamber 6 receives absorbent material 8 (compared by the Examiner to the claimed “*support layer*”) and a liquid-

¹ Spec., p. 4, lines 2-9.

proof sheet 7 (compared by the Examiner to the claimed “*moisture barrier layer*”).

According to van der Bend’s straightforward disclosure, however, the absorbent material 8 and the liquid-proof sheet 7 are simply placed in the test chamber 6. This disclosure is far too broad to teach or suggest that the absorbent material 8 is “*adhered to*” the liquid-proof sheet 7, as required by claim 1.

In short, van der Bend does not teach the features upon which the Examiner relies to reject claim 1. Accordingly, even if combined in the manner suggested by the Examiner, the resultant combination would not meet each and every feature of claim 1.

The Examiner’s Articulated Motivation is in Error

Turning to the next point, the Examiner concludes that it would have been obvious to modify van der Bend by arranging the frame 4 on top of the absorbent material 8 “to prevent leakage of fluid” from the test chamber 6.² *Prevent leakage of fluid?* This is simply not understood. Applicant agrees with the Examiner that the secondary reference to Anhäuser discloses a test plaster 1 in which an absorbent material 10 is placed on an adhesive layer 7, and a ring 9 is mounted on the absorbent material 10. However, there is simply no reason to believe that Anhäuser’s “stacked” structure would somehow improve upon (or cure a deficiency in) van der Bend’s test device.

For example, Anhäuser provides no disclosure whatsoever to the effect that the “stacked” structure provides better fluid containment properties than van der Bend’s “non-stacked” structure. Without any objective teaching (or cogent line of technical reasoning) in this regard, the Examiner’s alleged modification appears to be based in large part upon improper hindsight of the instant application.

The References Teach Directly Away From the Alleged Combination

Furthermore, van der Bend contains express teachings that would have led those skilled in the art *directly away from* the alleged modification. For example, van der Bend indicates that an object of the invention is to provide a test device with “the smallest possible thickness.”³ If, however, the frame 4 were stacked on top of the absorbent material 8 (as alleged by the Examiner), then the thickness of the test device would be necessarily (and undesirably) increased.

² Office Action, p. 3, lines 11-14.

³ English translation of van der Bend, p. 1, lines 9-12.

B. Independent Claim 18:

Independent claim 18 is somewhat similar to claim 1 to the extent that claim 18 recites (among other things) that the foam plastic layer has a lower surface “*mounted on the support element.*” Accordingly, claim 18 is believed patentable for reasons analogous to some of those noted above with respect to claim 1.

Claim 18 is also believed patentable because it recites that the foam plastic layers of the test chambers are “*spaced apart from each other.*” Van der Bend is simply not pertinent to this feature because, as clearly shown in Fig. 3, a single frame 4 is provided with a plurality of openings 6 that define the test chambers.

Finally, claim 18 defines the adhesive layer 26 (of the illustrated embodiments) in a *means-plus function* format to evoke treatment under 35 USC 112(6th). Under 35 USC 112(6th), the *means-plus-function* feature requires that the prior art element perform the identical function specified in the claims. According to claim 18, the foam plastic layer has an upper surface with “*adhesive means for attaching the foam plastic layer to a test area.*”⁴

Van der Bend is simply not pertinent. As shown in Figs. 3 and 4 of van der Bend, the cover layer 9 includes an adhesive 10 that contacts the upper surface of the frame 4. However, when the cover 9 is removed from the frame 4, the adhesive 10 remains on the cover 9 and not on the frame 4 (as shown in Fig. 3). Thus, the upper surface of the frame 4 does not include any adhesive, much less one that would serve to attach the frame to a test area, such as a patient’s skin.

C. Independent Claim 20:

Independent claim 20 is somewhat similar to claim 1 to the extent that claim 20 recites (among other things) that the foam plastic layer is “*mounted on the support element.*” Accordingly, claim 20 is believed patentable for reasons analogous to some of those noted above with respect to claim 1.

Claim 20 is also believed patentable because it recites that the adhesive layer provided on the foam plastic layer includes “*an opening through which an interior of the test chamber*

⁴ Spec., p. 4, lines 31-34; and p. 5, lines 15-19.

is exposed.” An example, non-limiting embodiment of this feature is depicted in Fig. 2. Here, the adhesive layer 26 includes an opening superposed above the test chamber 31.

The Examiner compares the layer of material 19 provided on van der Bend’s cover strips 16, 17 to the claimed “*adhesive layer provided on the foam plastic layer.*”⁵ This is nothing more than an incorrect comparison of *apples and oranges*. For example, according to van der Bend’s straightforward disclosure, the layer of material 19 “rejects the adhesive agent 2” provided on the carrier 3.⁶ Certainly then, the layer 19 is not an “adhesive layer,” as claimed. Further, the layer 19 is provided on the cover strips 16, 17, which are separate and distinct elements from the frame 4. And finally, the layer 19 does not include any openings, especially not ones that expose the interiors of the test chambers 6. The Examiner’s allegations to the contrary are simply incorrect.

CONCLUSION

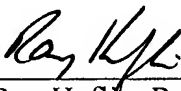
In view of the above, Applicant earnestly solicits reconsideration and allowance of all of the pending claims.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant petitions for a one (1) month extension of time for filing a reply to the Office Action and submit the required \$60.00 extension fee herewith.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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⁵ Office Action, p. 6, lines 5-6.

⁶ English translation of van der Bend, p. 3, lines 5-7.